IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11943 of 2002
with
SPECIAL CIVIL APPLICATION No 12051 of 2002
with
SPECIAL CIVIL APPLICATION No 12060 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

BHUPATBHAI ARJANBHAI CHAUHAN

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Appearance:

1. Special Civil Application No. 11943 of 2002
GOVERNMENT PLEADER for Petitioner No. 1-2
MR RM CHHAYA for Respondent No. 1
2. Special Civil Application No. 12051 of 2002
GOVERNMENT PLEADER for Petitioner No. 1
MR RM CHHAYA for Respondent No. 1
3. Special Civil Application No. 12060 of 2002
GOVERNMENT PLEADER for Petitioner No. 1
MR RM CHHAYA for Respondent No. 1

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CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/03/2003

COMMON ORAL JUDGEMENT

In all these petitions a common judgement and award in Reference (LCB) No.417/92, 421/92 & 423/92 passed by the Labour Court, Bhavnagar dated 27.5.2002 is under challenge. The operative part of the judgement and award is that the references of the applicants (respondent-workmen herein) are partly allowed. The establishment-- authorities are directed to reinstate all the three workmen to their original post with continuity of service and 80% back wages.

2. Mr.Digant P. Joshi, the learned Assistant Govt. Pleader assailed the said judgement and award mainly on the ground that the learned Judge has passed the said judgement and award relying on the deposition of only one applicant, namely, Rustamkhan B. Pathan, who deposed for all the three workmen that too without supporting his case with any documentary evidence. Nothing much is required to be said about the flaws in the deposition of the said Rustamkhan Pathan inasmuch as the officers of the establishment have also not taken any pains to produce relevant material to dislodge the claim of the workmen. The evidence produced for all the three workmen is only by way of testimony of the said Rustamkhan Pathan who while deposing has stated that they were getting monthly salary of Rs.765/-, and that they were discharging continuous, uninterrupted service and that without following any procedure their services were terminated orally on 25.2.1992. From the perusal of the judgement and order it is clear that the deponent, Rustamkhan Pathan made statement to the effect that in the year 1989-90 he had worked for 286.5 days, in the year 1990-91 he worked for 115 days and in the year 1991-92 he worked for 114 days, but he has not substantiated the same even with an iota of documentary evidence, which could have been done in light of the fact that he has stated that his presence was marked in the muster roll and that he was paid after obtaining signature in the salary register, if he was not able to produce any document for himself, he could have called upon the establishment to produce the aforesaid documents. On behalf of the establishment one Devrajbhai Vashrambhai Goti was examined at exh.33, and as usual he deposed contradictory in terms, in chief and in cross examination. The case put forward by the establishment through this witness was that the workmen had abandoned the job, but when he was cross examined he said that the respondent workmen were coming for getting job, but then as there was no work available they were not given work.

Both these things cannot go together. If in the chief, the case was that the respondent workmen had abandoned the job, in cross examination it could not have been that though they were coming to the establishment for getting the work, they were not provided because work was not available. Not only that, a vary casual approach is reflected in the entire matter including that of the number of days for which the respondent workmen worked. Taking into consideration that, the case of the establishment was that, the respondent workmen had abandoned the job it was obligatory on the part of the establishment to establish the same by leading necessary evidence, because in case of 'abandonment of job, it is obligatory for the establishment to write a letter to the workmen and call upon them to attend duty. Even the alternative plea of 'work being not available' could have been proved before the learned Judge by leading necessary evidence to that effect.

3. Both the sides cited several authorities before the learned Judge in support of their respective claims and the learned Judge without being mindful of the fact that prima facie it was for the respondent workmen to prove their case of having worked for 240 days, as laid down by the Honourable the Apex Court in the case of State of Karnataka and another Vs. S.T. Hadimani, reported in AIR 2002 Supreme Court 1147, relying on the deposition of only one man, passed the impugned award. Not only that the aspect of back wages is also dealt with in a very casual manner and awarded 80% back wages. The learned Judge has dealt with the citations also in a very cursory manner which reflects the approach of the learned Judge to the serious question of law like as to whether the Irrigation Department is an industry or not.

4. In overall view of the matter the judgement and award is required to be quashed and set aside. Order accordingly. However, to see that the respondent workmen are not subjected to any injustice it is deemed fit that the matter be remanded to Labour Court No.1, Bhavnagar with a direction that the learned Judge should give priority to the matter and decide the same as expeditiously as possible preferably within four months from the date of receipt of this order. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
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